Filed 6/6/07 P. v. Lawrence CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. STEVEN ERIC LAWRENCE, Defendant and Appellant.	G036885 (Super. Ct. No. 05SF0573) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Everett W. Dickey, Temporary Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Jeffrey A. Needelman, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer and Edmund G. Brown, Jr., Attorneys General, Mary Jo Graves, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Kelley Johnson, Bradley Weinreb, and Ronald A. Jakob, Deputy Attorneys General, for Plaintiff and Respondent.

Steven Eric Lawrence appeals from a judgment after a jury convicted him of domestic battery with corporal injury and the trial court found true he suffered a prior prison term. He argues there were numerous instructional errors, including cumulative instructional error, and his Sixth Amendment confrontation rights were violated. Although we agree the trial court should have instructed the jury sua sponte with CALJIC No. 2.22, we conclude Lawrence was not prejudiced. None of his other contentions have merit, and we affirm the judgment.

FACTS

Lawrence married Shirley Goemaat in 2004. In May 2005, they lived in a duplex in the City of San Clemente. Their neighbors were the Steinbergs. Goemaat and Lawrence were having marital problems because she thought he worked too much and he was having an affair. He denied having an affair, but she did not believe him because he often did not come home at night. Beginning after they were married, they argued, and he hit, shoved, pushed, kicked, and spit on her. She did not call the police because he usually apologized and she did not want him to go to jail.

On the day in question, Goemaat did not see Lawrence until about 1:00 or 2:00 p.m. He had not come home the previous night. She heard him in the Steinbergs' garage, and she went to speak with him. She asked him where he had been, but he did not respond. He finally told her that he was with his "friend" named "Suzanne." She told him "he could just go live with his fucking hooker." They argued for approximately 15 minutes. When she asked what they were doing, he did not respond. He declined her request to go to their home and talk about it further, and she went inside and called a friend.

Goemaat went to the Steinbergs' garage twice, and the second time, found Lawrence, and she asked him if he was coming home. She again went home without him. Eventually, he went home. He had poured himself a glass of milk and was making

something to eat when she confronted him about why he did not come home the previous night. They argued.

Goemaat asked Lawrence to leave. Lawrence threw the milk from the glass at Goemaat; it covered the front of her body, including her face and hair. He called her a "'fucking cunt.'" She was "extremely afraid." She called him "'a son of a bitch.'" Lawrence hit Goemaat twice on the face, once on the left eye and once on the right eye, with what she thought was a closed fist. He threw a third punch, but she ducked, and it landed on her shoulder. The attack lasted one minute. She almost fell, but regained her balance. Lawrence said he wanted to kill her. He left.

Roberta Steinberg immediately went next door because her husband heard something. Goemaat had previously told Steinberg she was confused about her relationship with Lawrence and she believed he was having an affair. Steinberg had heard them fighting on three separate occasions before the incident. When Steinberg arrived, Goemaat was crying. Goemaat told her that Lawrence had hit her on the face and shoulder, he told her he was going to kill her, and he left. She also told her about the milk. Steinberg did not see any bruises or marks on her face. Steinberg asked her if she was hurt and needed help. Goemaat said she was hurt, but did not know whether she needed help because she was confused. Steinberg called 911. Later that evening, Goemaat noticed her eyes were black.

Officer Jeffrey Schnell responded to the call. When he arrived, Goemaat was distraught and crying, and the area above her right eye was red. He saw what appeared to be dried milk on a mirror and coffee table. Goemaat told him that Lawrence called her "a cunt" and said, "'I want to kill you.'" She stated he hit her on both her eyes and left shoulder. Goemaat said she was afraid, and she told Lawrence to leave. By the end of their 45-minute conversation, Schnell noticed Goemaat's right eye was swollen. While they spoke, Lawrence came home, and officers detained him outside. When Schnell finished interviewing Goemaat, he went outside to speak with Lawrence.

Lawrence told him he and Goemaat argued about whether he was having an affair. He spent the night with Suzanne, but he did not have sex with her. He overheard Goemaat talking on the telephone about him having an affair. When he returned home, he confronted Goemaat about the telephone call. They argued, he threw milk on her, and he told her he was leaving her. When Schnell told Lawrence about Goemaat's swollen eye, he said she prevented him from leaving and he may have elbowed her while they struggled. Schnell obtained an emergency protective order for Goemaat.

At the police station, Schnell asked Lawrence whether he had threatened to kill Goemaat, and he replied, "he may have said something like that." When asked a second time, he did not respond. When asked a third time, Lawrence stated he told her, "'I wish her mother had a freakin [*sic*] abortion.'"

Steinberg saw Goemaat the next day—she had brown lines on one eye. An officer went to Goemaat's home two days later to photograph her. The photographs were admitted into evidence at trial.[1]

Goemaat visited Lawrence six or seven times while he was in jail, and spoke to him on the telephone. He apologized. She still loved him and did not want a divorce.

An information charged Lawrence with domestic battery with corporal injury (Pen. Code, § 273.5, subd. (a))[2] (count 1), and criminal threats (§ 422) (count 2). The information alleged he suffered a prior prison term. (§ 667.5, subd. (b).)

Lawrence rested on the state of the evidence. He argued self-defense and attributed the marks and sores on Goemaat's face to long term methamphetamine use.

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[1] The exhibits were transmitted to this court for our review.

[2] All further statutory references are to the Penal Code, unless otherwise indicated.

The jury convicted him of count 1 and acquitted him of count 2. He admitted the prior prison term allegation. The trial court sentenced him to the middle term of three years on count 1, and a consecutive term of one year on the prior prison term allegation for a total sentence of four years in state prison.

DISCUSSION

I. Jury Instructions

A. CALJIC No. 2.22

Lawrence argues the trial court erroneously failed to instruct the jury sua sponte with CALJIC No. 2.22 because there was conflicting testimony concerning: who told who to leave, how Goemaat's injuries occurred, where the fighting occurred, and the extent of her injuries. We agree there was conflicting testimony, but conclude the error was harmless.

CALJIC No. 2.22, "Weighing Conflicting Testimony," states: "You are not required to decide any issue of fact in accordance with the testimony of a number of witnesses, which does not convince you, as against the testimony of a lesser number or other evidence, which you find more convincing. You may not disregard the testimony of the greater number of witnesses merely from caprice, whim or prejudice, or from a desire to favor one side against the other. You must not decide an issue by the simple process of counting the number of witnesses [who have testified on the opposing sides]. The final test is not in the [relative] number of witnesses, but in the convincing force of the evidence."

The trial court must instruct the jury sua sponte with CALJIC No. 2.22 where conflicting testimony is presented. (*People v. Cleveland* (2004) 32 Cal.4th 704, 751; *People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 884-885.) Here, there was conflicting testimony. Goemaat, Steinberg, and Schnell all testified Lawrence hit Goemaat twice on the face and once on the shoulder. Although Lawrence did not testify, Schnell testified Lawrence told him that after he and Goemaat argued, he tried to leave,

she prevented him from doing so, and he might have elbowed her while they struggled. Therefore, there was conflicting testimony regarding whether Lawrence intentionally hit her with his hand or elbowed her as they struggled and he tried to leave. The court should have instructed the jury sua sponte with CALJIC No. 2.22. However, we conclude the error was harmless.

In *People v. Snead* (1993) 20 Cal.App.4th 1088, 1097 (*Snead*), defendant made the same argument made here, i.e., the trial court's failure to instruct the jury with CALJIC No. 2.22 was prejudicial error. Although the *Snead* court agreed the trial court erred, it found the error harmless because the court had instructed the jury with other standard instructions which provided guidance for the jury in its consideration and evaluation of the evidence. (*Ibid*.)

Here, the trial court instructed the jury with the same instructions the jury was instructed with in *Snead*. (CALJIC Nos. 2.00, "Direct And Circumstantial Evidence—Inferences," 2.20, "Believability Of Witness," 2.21.1, "Discrepancy In Testimony," 2.21.2, "Witness Willfully False," 2.27, "Sufficiency of Testimony Of One Witness," & 2.80, "Expert Testimony—Qualifications Of Expert.") (*Snead, supra,* 20 Cal.App.4th at p. 1097.) The court also instructed the jury with CALJIC Nos. 2.01, "Sufficiency Of Circumstantial Evidence—Generally," 2.11, "Production Of All Available Evidence Not Required," 2.13, "Prior Consistent Or Inconsistent Statements As Evidence," and 2.81, "Opinion Testimony Of Lay Witness." It is well settled that whether jury instructions are correct is to be determined from all the instructions, not from a consideration of parts of an instruction or from a particular instruction. (*People v. Castillo* (1997) 16 Cal.4th 1009, 1016.)

Additionally, there was no evidence the trial court's failure to instruct the jury with CALJIC No. 2.22 hindered the jury in its ability to evaluate the evidence. The jury did not convict Lawrence on both counts—it acquitted him of count 2. It appears the jury carefully and conscientiously evaluated the evidence and did not base its verdicts

solely on the fact the district attorney presented more witnesses than Lawrence. We conclude, as did the court in *Snead,* there was no reasonable likelihood of juror misunderstanding caused by the omission of CALJIC No. 2.22. (*Snead, supra,* 20 Cal.App.4th at p. 1097.)

Finally, Lawrence complains the trial court's failure to instruct the jury with CALJIC No. 2.22 was compounded by the court's "technical[] modif[ication]" of CALJIC No. 2.71, "Admission—Defined." He asserts the court improperly added the following language, "Evidence of an oral admission of the defendant not made in court should be viewed with caution."

The trial court did not technically modify CALJIC No. 2.71. The language Lawrence complains of was standard language that was part of the instruction at the time of trial. As best we can tell, the court mistakenly crossed it out and then rewrote it by hand. Lawrence did not object to this instruction, and he cannot now complain. And as we explain above, the instructions viewed as a whole adequately instructed the jury on the applicable legal principles as evidenced by the fact the jury acquitted him on count 2. Thus, there is not a reasonable probability Lawrence would have received a better result had the trial court instructed the jury sua sponte with CALJIC No. 2.22. (*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).)

B. CALJIC No. 3.31.5

Section 273.5, subdivision (a), is a general intent crime requiring "only the mens rea of intending to do the assaultive act." (*People v. Thurston* (1999) 71 Cal.App.4th 1050, 1055 (*Thurston*).) Where a defendant is charged with violating section 273.5, subdivision (a), the trial court should instruct the jury with CALJIC No. 3.30, "Concurrence Of Act And General Criminal Intent." (*People v. Campbell* (1999) 76 Cal.App.4th 305, 307-309; *Thurston, supra,* 71 Cal.App.4th at

pp. 1052, 1056.) Here, the trial court instructed the jury section 273.5, subdivision (a), requires general intent in accordance with CALJIC No. 3.30. Therefore, we find no error.

Relying on *People v. Cleaves* (1991) 229 Cal.App.3d 367 (*Cleaves*), Lawrence contends the trial court erroneously failed to instruct the jury sua sponte with CALJIC No. 3.31.5, "Mental State," concerning the general criminal intent necessary for a violation of section 273.5, subdivision (a).[3] *Cleaves* did not involve section 273.5, subdivision (a). Lawrence does not provide any reasoned argument as to the relevance of *Cleaves*, so we need not discuss it any further. (Cal. Rules of Court, rule 8.204(a)(1)(B); *People v. Stanley* (1995) 10 Cal.4th 764, 793 [waiver rule].)

C. CALJIC No. 4.45

Relying on *People v. Gonzalez* (1999) 74 Cal.App.4th 382 and *Cleaves, supra*, 229 Cal.App.3d 367, Lawrence claims the trial court erroneously failed to instruct the jury sua sponte with CALJIC No. 4.45, "Accident And Misfortune." We disagree.

CALJIC No. 4.45 states, "When a person commits an act or makes an omission through misfortune or by accident under circumstances that show [no] . . . [criminal intent [n]or purpose,] . . . [he] . . . does not thereby commit a crime."

Cleaves did not involve CALJIC No. 4.45, and as before, Lawrence does not explain its applicability. Therefore, we need not discuss it further.

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[3] CALJIC No. 3.31.5, "Mental State," provides: "In the crime[s] charged in Count[s] _____, _____ and _____ [or which [is a] [are] lesser crime[s] thereto], [namely, _____, _____ and _____,] there must exist a union or joint operation of act or conduct and a certain mental state in the mind of the perpetrator. Unless this mental state exists the crime to which it relates is not committed. [¶] [The mental state[s] required [is] [are] included in the definition[s] of the crime[s] set forth elsewhere in these instructions.] [¶] In the crime of _____, the necessary mental state is _____. [¶] [In the crime of _____, the necessary mental state is _____.] [¶] [In the crime of _____, the necessary mental state is _____.]"

In *Gonzales*, the victim testified her injuries were caused by an accident. She claimed the door struck her as she was leaving the room and the defendant was entering it. She said the defendant did not assault her, and she denied he "grabbed her by the hair, hit her in the face, threw her against the wall, kicked her in the legs, or punched her in the stomach." (*Gonzales, supra*, 74 Cal.App.4th at p. 385.) The defendant's brother testified the victim had told him she had been hit by the door and her injury was caused by an accident. The defendant's mother testified the victim said, "she accidentally hit her head on the [door]" when defendant entered the room. (*Id.* at p. 386.) During closing argument, defense counsel argued the victim's injuries had been caused by defendant accidentally opening the door as the victim was coming out the door. (*Id.* at pp. 386-387.) The *Gonzales* court reversed defendant's conviction because there was substantial evidence to support the defense of accident and the trial court did not give the instruction sua sponte. (*Id.* at pp. 390-391.)

In his opening brief, Lawrence does not cite to any evidence to support his contention the trial court had a sua sponte duty to instruct the jury with CALJIC No. 4.45. He merely states, "the evidence supported these defenses."

In his reply brief, Lawrence states, "the only legitimate inference to be drawn from [Lawrence's] statement to . . . Schnell that he '*may* have elbowed' Goemaat while exiting the apartment was that Goemaat's injuries were the result of an accident." (Italics added.) Lawrence relies on the word "'may'" and the fact the district attorney during direct examination of Schnell characterized Lawrence's statement as he "'*accidentally* elbowed his wife'" to support his claim. (Italics added.) Additionally, he states, "[a]lthough [Lawrence's] trial counsel argued that this evidence showed that [he] acted in self-defense, the trial court should not have instructed the jury on self-defense because the evidence did not support this inference."

"'"It is settled that in criminal cases, even in the absence of a request, the trial court must instruct on the general principles of law relevant to the issues raised by

the evidence. [Citations.] The general principles of law governing the case are those principles closely and openly connected with the facts before the court, and which are necessary for the jury's understanding of the case." [Citation.] . . . [¶] . . . [¶] [T]he sua sponte duty to instruct on all material issues presented by the evidence extends to *defenses* as well as to lesser included *offenses* [citation] . . . . In the case of *defenses*, . . . a sua sponte instructional duty arises 'only if it appears that the defendant is relying on such a defense, or if there is substantial evidence supportive of such a defense *and* the defense is not inconsistent with the defendant's theory of the case.' [Citations.] Thus, when the trial court believes 'there is substantial evidence that would support a *defense* inconsistent with that advanced by a defendant, the court should ascertain from the defendant whether he wishes instructions on the alternative theory.' [Citations.]" (*People v. Breverman* (1998) 19 Cal.4th 142, 154-157.)

Here, Lawrence concedes that at trial his defense counsel argued self-defense, and not the defenses of accident or misfortune. Thus, he did not rely on the defenses of accident or misfortune at trial.

As to whether there was substantial evidence supporting those defenses, we conclude there was not. Schnell testified Lawrence told him "he had been trying to leave the apartment and she wouldn't let him leave; that during the struggle he may have elbowed her." This testimony was not sufficient to establish the defense of accident or misfortune. It was sufficient evidence to establish self-defense, which is what defense counsel argued. To suggest the trial court should have ignored the evidence and defense counsel's theory of the case and not instructed on self-defense is contrary to well established legal principles. And, the district attorney's characterization of a witness's testimony is not evidence. Because there was no evidence supporting the defenses of

accident or misfortune[4] and because Lawrence's defense counsel did not argue those defenses, the trial court was not required to instruct the jury sua sponte with CALJIC No. 4.45.

D. Prior Acts of Domestic Violence

Lawrence asserts, again without any reasoned argument, but for the reasons related to his claims concerning CALJIC No. 4.45, the trial court erroneously failed to instruct the jury "that they should find beyond a reasonable doubt that [he] committed other acts of domestic violence against Goemaat." Although he does not specify which instruction he claims is constitutionally infirm, we assume he is referring to CALJIC No. 2.50.02, "Evidence Of Other Domestic Violence."

The trial court instructed the jury with CALJIC No. 2.50.02 as follows: "Evidence has been introduced for the purpose of showing that the defendant engaged in an offense involving domestic violence [on one or more occasions] other than that charged in the case. [¶] ['Domestic violence' means abuse committed against an adult who is a spouse. [¶] . . . [¶] "Abuse" means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another. [¶] If you find that the defendant committed a prior offense involving domestic violence, you may, but are not required to, infer that the defendant had a disposition to commit [another] offense involving domestic violence. If you find that the defendant had this disposition, you may, but are not required to, infer that [he] was likely to commit and did commit the crime of which [he] is accused. [¶] However, if you find by a *preponderance of the evidence* that the defendant committed a prior crime or crimes involving domestic violence, that is not sufficient by itself to prove beyond a reasonable doubt that [he]

[4] Because there was no evidence supporting these defenses, we not address whether the defense of self-defense is inconsistent with the defenses of accident or misfortune.

committed the charged offense. If you determine an inference properly can be drawn from this evidence, this inference is simply one item for you to consider, along with all other evidence, in determining whether the defendant has been proved guilty beyond a reasonable doubt of the charged crime. [¶] [Y]ou must not consider this evidence for any other purpose.]" (Italics added.)

In *People v. Reliford* (2003) 29 Cal.4th 1007, 1015, the California Supreme Court addressed and rejected a similar challenge to CALJIC No. 2.50.01, "Evidence Of Other Sexual Offenses." In *People v. Pescador* (2004) 119 Cal.App.4th 252, 258, the court addressed a similar challenge to the instruction at issue here, CALJIC No. 2.50.02. In rejecting defendant's constitutional claims, the court opined, "For the purposes of evaluating the constitutional validity of the instructions, there is no material difference between CALJIC No. 2.50.01 and CALJIC No. 2.50.02. [Citation.]" (*Id.* at p. 261.) We agree with *Reliford* and *Pescador*, and conclude CALJIC No. 2.50.02 does not impermissibly lower the district attorney's burden of proof.

E. CALJIC Nos. 2.70 and 2.71.5

Lawrence argues the trial court erroneously failed to instruct the jury sua sponte with CALJIC Nos. 2.70 and 2.71.5. We will address each in turn.

1. CALJIC No. 2.70

Lawrence asserts the trial court erroneously "fail[ed] to instruct the jury sua sponte with the last sentence of . . . CALJIC No. 2.70[.]" Not so.

CALJIC No. 2.70, "Confession And Admission—Defined," provides: "A confession is a statement made by a defendant in which [he] [she] has acknowledged [his] [her] guilt of the crime[s] for which [he] [she] is on trial. In order to constitute a confession, the statement must acknowledge participation in the crime[s] as well as the required [criminal intent] [state of mind]. [¶] An admission is a statement made by [a] [the] defendant which does not by itself acknowledge [his] [her] guilt of the crime[s] for which the defendant is on trial, but which statement tends to prove [his] [her] guilt when

considered with the rest of the evidence. [¶] You are the exclusive judges as to whether the defendant made a confession [or an admission], and if so, whether that statement is true in whole or in part. [¶] [Evidence of [an oral confession] [or] [an oral admission] of the defendant not made in court should be viewed with caution.]"

A trial court must instruct the jury sua sponte with CALJIC No. 2.70 if evidence of a defendant's oral confession or admission is presented. (*People v. Stankewitz* (1990) 51 Cal.3d 72, 94.) "'A confession is a declaration by a person that he is guilty of a crime. . . . It differs from an admission of an accused in that the confession is an express and complete acknowledgment of guilt of the crime, while an admission may be either express or implied, and is merely an acknowledgment of some fact which tends to prove guilt.' [Citations.]" (*Creutz v. Superior Court* (1996) 49 Cal.App.4th 822, 828-829.)

Here, Lawrence contends, "several of [Lawrence's] pretrial statements to Schnell tended to establish that [he] *confessed* to the crime and not merely *admitted* to the crime." Once again, however, Lawrence does not provide us with those statements.

Based on our review of the record, we conclude Lawrence never confessed to count 1, domestic battery with corporal injury, or the charge he was acquitted of, count 2, making a criminal threat. With regard to count 1, Lawrence told Schnell "he had been trying to leave the apartment and she wouldn't let him leave; that during the struggle he may have elbowed her." This evidence did not establish Lawrence willfully inflicted bodily injury upon Goemaat or that the injury resulted in a traumatic condition. His statement, however, was an *admission* he may have hit her with his elbow, and the jury could rely on it, along with all the other evidence, to establish guilt. And, the trial court properly instructed the jury with CALJIC No. 2.71, "Admission—Defined," including the language Lawrence complains of here. As we explain above, the court crossed out and then hand wrote the following: "Evidence of an oral admission of the defendant not made in court should be viewed with caution."

As to count 2, although Lawrence told Schnell he "may have" said he wanted to kill Goemaat, Lawrence told Schnell he said, "'I wish [your] mother had a freakin [*sic*] abortion.'" Although tasteless and cruel, this was not a criminal threat. Thus, Lawrence did not confess to count 2. Because Lawrence did not confess to either count, the trial court had no sua sponte duty to instruct the jury with CALJIC No. 2.70.

2. CALJIC No. 2.71.5

Lawrence argues the trial court erroneously failed to instruct the jury sua sponte with CALJIC No. 2.71.5. Again, we disagree.

CALJIC No. 2.71.5, "Adoptive Admission—Silence, False Or Evasive Reply To Accusation," states: "If you should find from the evidence that there was an occasion when [a] [the] defendant (1) under conditions which reasonably afforded [him] [her] an opportunity to reply; (2) [failed to make a denial] [or] [made false, evasive or contradictory statements,] in the face of an accusation, expressed directly to [him] [her] or in [his] [her] presence, charging [him] [her] with the crime for which this defendant now is on trial or tending to connect [him] [her] with its commission; and (3) that [he] [she] heard the accusation and understood its nature, then the circumstance of [his] [her] [silence] [and] [conduct] on that occasion may be considered against [him] [her] as indicating an admission that the accusation was true. Evidence of an accusatory statement is not received for the purpose of proving its truth, but only as it supplies meaning to the [silence] [and] [conduct] of the accused in the face of it. Unless you find that [a] [the] defendant's [silence] [and] [conduct] at the time indicated an admission that the accusatory statement was true, you must entirely disregard the statement."

Although Lawrence initially states the trial court had a sua sponte duty to instruct the jury with CALJIC No. 2.71.5, he later concedes there is no case authority to support his contention. To the contrary, in *People v. Carter* (2003) 30 Cal.4th 1166, 1198, the California Supreme Court held a trial court must give the instruction only when a defendant requests the instruction. Here, Lawrence did not request it.

Additionally, Lawrence relies on Goemaat's statements to Schnell to support his claim the instruction was appropriate. CALJIC No. 2.71.5 should be given when a "defendant," not a victim or witness, makes an adoptive admission. And, there was no evidence Lawrence was silent or made false, evasive, or contradictory statements in the face of an accusation. Therefore, the trial court had no sua sponte duty to instruct the jury with CALJIC No. 2.71.5.

F. Cumulative Error

Lawrence claims he was prejudiced by the cumulative effect of the instructional errors, specifically CALJIC Nos. 2.22 and 4.45. We have found only one instance of error, the trial court's failure to instruct the jury sua sponte with CALJIC No. 2.22. However, we found Lawrence was not prejudiced. Therefore, his claim the cumulative effect of the instructional errors was prejudicial has no merit.

II. Sixth Amendment Confrontation Clause

Lawrence contends his Sixth Amendment right to confront the witnesses against him was violated when Schnell testified concerning Don Steinberg's (Don) statements. He is wrong.

We need not recite the legal principles regarding the Sixth Amendment's guarantee a defendant may confront the witnesses against him. Here, the trial court did not permit Schnell to testify to any statements Don made to him because Don did not testify at trial. Simply put, Don's statements were not admitted.

Further, it was defense counsel, during cross-examination, not the district attorney, during direct examination, who tried to elicit those statements. The district attorney objected to defense counsel's questions. And it was defense counsel, during closing argument, who tried to revisit the topic, but was prevented from doing so when the trial court sustained the district attorney's objection. Lawrence cannot now complain as he was the party seeking to elicit the testimony. (*People v. Visciotti* (1992) 2 Cal.4th 1, 72 [defendant may not complain about the admissibility of evidence he introduced

himself].) Thus, Lawrence's Sixth Amendment right to confront the witnesses against him was not violated.

DISPOSITION

The judgment is affirmed.

O'LEARY, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

IKOLA, J.